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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/089,559 | 07/08/2002 | Otfried Schwarzkopf | 825-164 | 4489 |

7590 09/17/2003
Andrus Scealess Starke & Sawall
100 East Wisconsin Avenue Suite 1100
Milwaukee, WI 53202-4178

EXAMINER

LESLIE, MICHAEL S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3745

DATE MAILED: 09/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,559

Applicant(s)

SCHWARZKOPF, OTFRIED

Examiner

Michael Leslie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

Figures 2, 4, and 5 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites that the “disc” is “a wobble plate that is rotatably mounted on a swash plate”, and claim 2 recites that the “disc” is “a swash plate”. In the art the terms “swash plate” and “wobble plate” are generally used interchangeably, however it appears, from claims 2 and 3, and the specification, that Applicant wishes to draw a distinction between the terms “swash plate” and “wobble plate” as different structures, thus it is unclear how the “disc” can be “a swash plate” in claim 2 and then be “a wobble plate that is rotatably mounted on a swash plate” in claim 5 which depends from claim 2.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura et al. (5,644,968).

Kimura et al. discloses an axial piston compressor with a drive shaft (6) for a tiltable disc (11), and at least one piston (9). The piston, includes at least two sliding blocks (14) that move along the disc on a slide way, and is arranged such that the piston encloses the sliding blocks in a C-shaped structure. Wherein the disc is tiltable around a pivot axis (Po) that is disposed eccentrically with respect to the mid-plane (Lo) of the disc, and is positioned relative to the mid-plane of the disc on the side facing the piston so that the disc can be moved relative to the sliding blocks so that the slide way of the sliding blocks projects beyond the edge of the disc only slightly or not at all. Wherein the disc is a swash plate that can rotated by the drive shaft and tilted with respect to the drive shaft.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 3 and 5 as far as it is definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura et al.

Kimura et al. as described above in claims 1 and 2, respectively, disclose an axial piston compressor. Kimura et al. teaches that the disc is a swash plate in the exemplary embodiment but does not teach that the disc is a wobble plate rotatably mounted on a swash plate. It is well known in the art that a swash plate and wobble plate can be used interchangeably with little modification to the system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the disc of Kimura et al. by using a wobble plate rotatably mounted on a swash plate for the purpose of converting the rotation of the drive shaft into reciprocating motion of the pistons.

Allowable Subject Matter

Claims 4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Leslie whose telephone number is (703) 305-0055. The examiner can normally be reached on M-F 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (703) 308-1044. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0861.

ML
September 12, 2003


Michael Leslie
Patent Examiner
AU 3745


EDWARD K. LOOK
SUPERVISORY PATENT EXAMINER
GROUP 3700

9/16/03